

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

06-15-07  
04:59 PM

Order Instituting Rulemaking on the Commission's  
Own Motion into the Service Quality Standards for  
All Telecommunications Carriers and Revisions to  
General Order 133-B

Rulemaking 02-12-004  
(Filed December 5, 2002)

**REPLY COMMENTS OF THE CALIFORNIA ASSOCIATION  
OF COMPETITIVE TELECOMMUNICATIONS  
COMPANIES ON THE ASSIGNED COMMISSIONER'S  
RULING AND SCOPING MEMO**

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Date: June 15, 2007

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**I. INTRODUCTION**

The California Association of Competitive Telecommunications Companies ("CALTEL")<sup>1</sup> on behalf of its members hereby replies to the opening comments of the parties on the Assigned Commissioner's Ruling and Scoping Memo dated March 30, 2007. After reviewing and evaluating all of the opening comments filed by the parties, CALTEL respectfully urges the Commission to reconsider the wisdom and

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<sup>1</sup> CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying next-generation networks to provide competitive voice, data, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

feasibility of attempting to apply symmetrical regulatory treatment to all communications providers<sup>2</sup>.

CALTEL does not come to this conclusion easily or lightly. Simply restating our support for the proposal to rely on third-party customer surveys (a course CALTEL followed in the URF proceeding) represents the less-contentious path.

CALTEL, however, must concur with the concerns raised by many parties regarding the wisdom of such an approach in the complex area of service quality. The opening comments express the shortcomings of third-party customer surveys well.

“(A) Commission-sponsored...survey could inadvertently distort the competitive market by leading consumers to believe the Commission is somehow endorsing one carrier’s services or products over another’s”<sup>3</sup>, “a Commission survey...could unintentionally favor one carrier over another depending on how the survey is structured...and could actually confuse or mislead consumers”<sup>4</sup>, “selection by the Commission of a given metric, or group of metrics, could lead...carriers...to devote resources to manage the specific issues or metrics chosen by the Commission...(over) issues or metrics that may be of greater interest to consumers”<sup>5</sup>, “the Commission has neither the expertise nor the resources for such a (complex) undertaking”<sup>6</sup>, “customer

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<sup>2</sup> See AT&T Opening Comments, p.12, fn 50 (questioning the feasibility of achieving symmetric regulation due to the Commission’s inability to regulate all competitors equally) and TURN Opening Comments at p. 15 (discussing how enshrining the goal of symmetric regulations falls victim to Emerson’s admonition that “a foolish consistency is the hobgoblin of little minds”).

<sup>3</sup> See CTIA Opening Comments at p. 2.

<sup>4</sup> See Verizon Wireless Opening Comments at p. 8.

<sup>5</sup> See JCP Opening Comments at pp. 6-7.

<sup>6</sup> Verizon Wireless Opening Comments at p. 6.

opinions can be swayed by ‘feel good’ tactics such as sponsorship of sports stadiums, green advertising, and the like, and thus not always represent customer satisfaction with the product provided”<sup>7</sup>, “[even if] surveys are... funded through a customer surcharge, such requirement would not be costless for CLECs”<sup>8</sup>.

On the other hand, proposals competing with the third-party surveys are also highly disadvantageous for competitive carriers <sup>9</sup> which cannot possibly absorb the significant increase in operational expenses that would result from adopting the recommendations of DRA or TURN; the expenses are not only high but wholly unwarranted in the absence of some, heretofore documented, customer service problems to be remedied.

Finally, CALTEL declines to join the chorus<sup>10</sup> espousing the view that all communication markets are sufficiently competitive to rely entirely on market forces to deliver high-quality service to all California consumers.

Surely there is some middle ground which serves the goal of insuring adequate service to consumers but does not seek to do so by imposing requirements on competitive carriers that (1) have not been shown to redress any documented consumer issue and (2) seem to be advanced as appropriate for small wireline carriers simply

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<sup>7</sup> See TURN Opening Comments at p. 17.

<sup>8</sup> See Cbeyond Opening Comments at p. 3.

<sup>9</sup> CALTEL notes that Frontier uses the term “competitive carrier” to apply to all carriers currently operating in the market (Frontier Opening Comments at p. \_). CALTEL’s use of the term herein applies only to carriers who have been certificated by the Commission as CLCs to compete with incumbent LECs in their legacy operating territories.

<sup>10</sup> See Opening Comments of AT&T, Verizon, Verizon Wireless, CTIA, Frontier/Citizens, Surewest and the Joint Commenting Parties.

because the four largest incumbent carriers have been deregulated<sup>11</sup>.

CALTEL notes that the Small LECs have advocated a practical, if unsymmetrical, approach specific to their circumstances and existing capabilities<sup>12</sup>, and urges the Commission to apply similar considerations to any additional requirements placed on competitive carriers.

## **II. COMPETITIVE CARRIERS MUST DELIVER HIGH-QUALITY SERVICE IN ORDER TO KEEP CUSTOMERS**

Much of note has transpired since opening and reply comments were filed in this proceeding over four years ago. Those four years have witnessed the advent of new intermodal technology and a plethora of regulatory and judicial developments. The significant market consolidation arising out of several mega-mergers has significantly altered the competitive landscape, and calls into question the basic premise of the Commission's original motion in this proceeding to develop service quality standards that would apply to "all" telecommunications carriers. As a result of these changes, and as CALTEL has described in a number of previous comments in the URF and Consumer Protection Initiative proceedings, today's non-cable wireline competitive carriers primarily serve medium-to-large business customers. These relatively sophisticated customers insist on a wide variety of voice and data solutions that deliver on both cost and quality. They place significant value on the responsiveness and dedicated support

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<sup>11</sup> CALTEL realizes that the Commission initiated a motion in this proceeding to establish service quality standards for "all" telecommunications carriers that predates the URF requirement for symmetric regulation. As discussed below, changes in the competitive landscape during the intervening five years since that motion was filed seriously call it into question as well.

<sup>12</sup> See Small LECs Opening Comments at p. 2.

provided by smaller, often regional, carriers<sup>13</sup>. Most of these customers receive multiple bids from service providers and negotiate service guarantees and penalties as a part of individual-case-basis (ICB) contracts. In other words, service quality provided by competitive carriers is superb because it has to be.

There does not appear to be any controversy on this point. CALTEL's periodic contacts with the Commission's Consumer Affairs Branch (CAB) and Public Advisor's office have not resulted in advice to our association of documented (or even anecdotal) evidence of systemic problems (or even relatively high numbers of complaints) involving either individual carriers or the competitive industry as a whole.

### **III. COMPETITIVE CARRIERS SIMPLY CANNOT ABSORB INCREASED OPERATIONAL COSTS TO TRACK AND REPORT ADDITIONAL SERVICE METRICS**

The Opening Comments of DRA and TURN contain proposals for wireline service measures, remedies, and in the case of DRA, customer surveys as well. Although DRA describes its proposal as "a very limited set of minimum service quality measures and standards", which has been "trimmed" down from its 2003 proposal, it still includes no less than 6 new measures (with multiple disaggregations) in addition to a requirement to supply the Commission with service outage data currently already provided to the FCC.

DRA has agreed to exempt from the reporting requirements service to all

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<sup>13</sup> CALTEL notes that the Assigned Commissioner's recommendation to limit customer surveys, service metrics and standards to "basic local exchange access line service" (ACR at p. 3, 6) would help mitigate some, but not all, of these concerns. CALTEL also notes that this recommendation was rejected by TURN (TURN Opening Comments at p. 3-4), but welcomes DRA's agreement to exempt all but very small business customers (those with 5 or less lines) from their proposed requirements.

but very small business customers. DRA offers a concession for small carriers, similar to that embraced in agreements reached between CALTEL and DRA in the URF Proceeding.<sup>14</sup> The two points of agreement are welcome and would mitigate much but not all of the impact for many CLECs.

TURN also appears to include some concessions for small carriers, but these concessions are vague, and in any event are unlikely to provide relief without concurrent reporting exemptions related to service to all but very small business customers. Furthermore, TURN's comments then illogically argue against the Commission adopting the exceptions TURN appeared to have made.<sup>15</sup>

In any event, proffering a list of discrete accommodations does not join the core issue before the Commission: can the Commission justify any decision to impose additional compliance requirements and related operational costs on competitive carriers simply on a vague desire to "level the playing field" or should the proponent of the new requirements first show that their requirements make sense from an economic perspective. Before competitive carriers are asked to fund new regulatory compliance personnel required to meet the dictates of either the DRA or TURN, it is incumbent on the proponents of the proposal to show that the new expense, (surely not part of the projected costs the carriers anticipated when entering the California market in the first place) offers to redress a problem the customer so of those carriers has expressed..

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<sup>14</sup> See R.05-04-005 DRA Reply Comments on Phase 2 Issues, pp. 16-17.

<sup>15</sup> See TURN Opening Comments, at p. 3.

#### IV. CONCLUSION

The Opening Comments of the Small LECs concludes that “their service quality remains excellent across the board, and there will be no benefit to customers, the Small LECs, or the Commission resulting from the creation of new standards or reporting for the Small LECs”<sup>16</sup>. Similarly, CALTEL submits that not only is there is no demonstrated public benefit to increasing regulation of competitive carriers, there is a very real and potentially significant harmful cost of doing so.

Respectfully submitted this June 15, 2007 at San Francisco, California.

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<sup>16</sup> See Small LECs Opening Comments at p. 2.



3300/001/X90156.v1

**CERTIFICATE OF SERVICE**

I, Melinda LaJaunie, certify that I have on this 15<sup>th</sup> day of June 2007 caused a copy of the foregoing

**REPLY COMMENTS OF THE CALIFORNIA  
ASSOCIATION OF COMPETITIVE  
TELECOMMUNICATIONS COMPANIES ON THE  
ASSIGNED COMMISSIONER'S RULING AND SCOPING  
MEMO DATED MARCH 30, 2007**

to be served on all known parties to A.06-07-026 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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ALJ Janice L. Grau  
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I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 15<sup>th</sup> day of June 2007 at San Francisco, California.

/s/ Melinda LaJaunie  
Melinda LaJaunie

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PUC/X90155.v1